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7

8 UNITED STATES DISTRICT COURT

9 DISTRICT OF NEVADA

10 CENTEX HOMES,) Case No.: 2:17-cv-02407-JAD-VCF
11 Plaintiff,)
12 vs.) PROTECTIVE ORDER
13 ST. PAUL FIRE & MARINE INS. CO., et al.)
14 Defendants.)
15 _____)
16 and related matter(s).)
_____)

17 The parties to this case stipulate and agree as follows:

18 WHEREAS, this action is an insurance coverage dispute ("Instant Action") arising from an
19 active underlying construction defect lawsuit styled *Kachnik v. Centex Homes*, Clark County
20 Superior Court Case No.: A726385 ("Underlying Action");

21 WHEREAS, Centex and Travelers (collectively "Parties") agree that discovery in this case
22 may involve the production of confidential, proprietary and/or private information for which special
23 protection from public disclosure may be warranted.

24 WHEREFORE, the Parties hereby stipulate to and petition the court to enter the following
25 Stipulated Protective Order.

26 I. Definitions

27 a. Challenging Party: a Party or Non-Party that challenges the designation of
28 information or items under this Order.

1 b. CONFIDENTIAL" Information or Items: information (regardless of how it is
2 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
3 Civil Procedure 26(c).

4 c. Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
5 as their support staff).

6 d. Designating Party: a Party or Non-Party that designates information or items that it
7 produces in disclosures or in responses to discovery as "CONFIDENTIAL."

8 e. Disclosure or Discovery Material: all items or information, regardless of the medium
9 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
10 transcripts, and tangible things), that are produced or generated in disclosures or responses to
11 discovery in the Instant Action.

12 f. Expert: a person with specialized knowledge or experience in a matter pertinent to
13 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
14 consultant in the Instant Action.

15 g. House Counsel: attorneys who are employees of a Party to the Instant Action. House
16 Counsel does not include Outside Counsel of Record or any other outside counsel.

17 h. Non-Party: any natural person, partnership, corporation, association, or other legal
18 entity not named as a Party to the Instant Action.

19 i. Outside Counsel of Record: attorneys who are not employees of a Party to the Instant
20 Action but are retained to represent or advise a Party to the Instant Action and have appeared in the
21 instant Action on behalf of that Party or are affiliated with a law firm which has appeared on behalf
22 of that Party.

23 j. Party: any party to the Instant Action, including all of its officers, directors,
24 employees, consultants, Experts, and Outside Counsel of Record (and their support staffs).

25 k. Producing Party: a Party or Non-Party that produces Disclosure or Discovery
26 Material in the Instant Action.

27 l. Professional Vendors: persons or entities that provide litigation support services
28 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,

1 storing, or retrieving data in any form or medium) and their employees and subcontractors.

2 m. Protected Material: any Disclosure or Discovery Material that is designated as
3 "CONFIDENTIAL."

4 n. Receiving Party: a Party that receives Disclosure or Discovery Material from a
5 Producing Party.

6 II. Scope

7 The protections conferred by this Stipulation and Order cover not only Protected Material
8 (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all
9 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
10 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

11 Protected Material shall not be published or reproduced in any manner on the internet, blogs,
12 bulletin boards, email, newspaper, magazines, bulletins, marketing material, or other media
13 available publicly or privately.

14 Protected Material may be copied or reproduced only to the extent reasonably necessary for
15 the conduct of the Instant Action. All such copies or reproductions shall be subject to the terms of
16 this Protective Order.

17 However, the protections conferred by this Stipulation and Order do not cover the following
18 information:

19 (a) any information that is in the public domain at the time of disclosure to a Receiving Party
20 or becomes part of the public domain after its disclosure to a Receiving Party as a result of
21 publication not involving a violation of this Order, including becoming part of the public record
22 through trial or otherwise; and

23 (b) any information known to the Receiving Party prior to the disclosure or obtained by the
24 Receiving Party after the disclosure from a source who obtained the information lawfully and under
25 no obligation of confidentiality to the Designating Party.

26 Any use of Protected Material at trial shall be governed by a separate agreement or order.

27 III. Duration

28 Even after final disposition of this litigation, the confidentiality obligations imposed by this

1 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
2 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
3 defenses in the Instant Action, with or without prejudice; and (2) final judgment herein after the
4 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of the Instant
5 Action, including the time limits for filing any motions or applications for extension of time
6 pursuant to applicable law.

7 | IV. Designating Protected Material

8 A. Designation For Information in Documentary Form (e.g., paper or electronic
9 documents, but excluding transcripts of depositions or other pretrial or trial proceedings).

10 1. The Producing Party shall affix the legend "CONFIDENTIAL" to each page
11 that contains Protected Material. If only a portion or portions of the material on a page qualifies for
12 protection, the Producing Party also must clearly identify the protected portion(s). The Producing
13 Party shall also affix one of the following legends to each page containing protected materials:

18 2. A Party or Non-Party that makes original documents or materials available
19 for inspection need not designate them for protection until after the inspecting Party has indicated
20 which material it would like copied and produced. During the inspection and before the designation,
21 all of the material made available for inspection shall be deemed conditionally CONFIDENTIAL.

22 3. After the inspecting Party has identified the documents it wants copied and
23 produced, the Producing Party must determine which documents, or portions thereof, qualify for
24 protection under this Order. Then, before producing the specified documents, the Producing Party
25 must affix "CONFIDENTIAL" to each page that contains Protected Material. If only a portion or
26 portions of the material on a page qualifies for protection, the Producing Party also must clearly
27 identify the protected portion(s).

28 || B. Designation for Deposition Testimony/Hearings

1 1. The Designating Party may invoke on the record (before the deposition,
2 hearing, or other proceeding is concluded) a right to have up to five (5) days after receipt of the
3 transcript to identify the specific portions of the testimony as to which protection is sought. Only
4 those portions of the testimony that are actually designated for protection within the 5-day period
5 shall be covered by the provisions of this Order. Alternatively, a Designating Party may specify, at
6 the deposition or up to 5 days afterwards if that period is properly invoked, that the entire transcript
7 shall be treated as "CONFIDENTIAL."

8 2. Parties shall give the other parties notice if they reasonably expect a
9 deposition, hearing, or other proceeding to include Protected Material. The use of a document as an
10 exhibit at a deposition shall not in any way affect its designation as "CONFIDENTIAL."

11 3. Transcripts containing Protected Material shall have an obvious legend on
12 the title page that the transcript contains Protected Material, and the title page shall be followed by a
13 list of all pages (including line numbers as appropriate) that have been designated as Protected
14 Material and the level of protection being asserted by the Designating Party. The Designating Party
15 shall inform the court reporter of these requirements.

16 4. A transcript that is prepared before a timely designation shall be treated
17 during that period as conditionally CONFIDENTIAL in its entirety unless otherwise agreed. After
18 the expiration of the designation period, the transcript shall be treated only as actually designated.

19 C. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
20 designate qualified information or items does not, standing alone, waive the Designating Party's
21 right to secure protection under this Order for such material. Upon timely correction of a
22 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
23 in accordance with the provisions of this Order.

24 V. Challenging Confidentiality Designations

25 A. Timing of Challenges. Any Party or Non-Party may challenge a designation of
26 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
27 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
28 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to

1 challenge a confidentiality designation by electing not to mount a challenge promptly after the
2 original designation is disclosed.

3 B. Meet and Confer. The Challenging Party shall initiate the dispute resolution process
4 by providing written notice of each designation it is challenging and describing the basis for each
5 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
6 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
7 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
8 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
9 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
10 Party must explain the basis for its belief that the confidentiality designation was not proper and
11 must give the Designating Party an opportunity to review the designated material, to reconsider the
12 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
13 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
14 has engaged in this meet and confer process first or establishes that the Designating Party is
15 unwilling to participate in the meet and confer process in a timely manner.

16 C. Judicial Intervention. If the Parties cannot resolve a challenge without court
17 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
18 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of either:
19 the parties agreeing that the meet and confer process will not resolve their dispute; or a participating
20 party's written notification that it is withdrawing from the meet and confer process. Each such
21 motion must be accompanied by a competent declaration affirming that the movant has complied
22 with the meet and confer requirements imposed in the preceding paragraph. Failure by the
23 Designating Party to make such a motion including the required declaration within 21 days shall,
24 upon 5 court days' written notice from a Challenging Party, automatically waive the confidentiality
25 designation for each challenged designation. In such case the Designating Party may file a motion
26 for relief from the waiver within 5 court days after the Challenging Party's written notice of waiver.
27 In addition, the Challenging Party may file a motion challenging a confidentiality designation at any
28 time if there is good cause for doing so, including a challenge to the designation of a deposition

1 transcript or any portions thereof. A Challenging Party filing a motion pursuant to this provision
2 must have complied with the foregoing meet and confer requirements and time limitations. Any
3 such motion must be accompanied by a competent declaration affirming that the movant has
4 complied with the meet and confer requirements imposed by the preceding paragraph.

5 The burden of persuasion in any such challenge proceeding shall be on the Designating
6 Party. Unless the Designating Party has waived the confidentiality designation by failing to file a
7 motion to retain confidentiality as described above, all parties shall continue to afford the material
8 in question the level of protection to which it is entitled under the Producing Party's designation
9 until the court rules on the challenge.

10 VI. Access To And Use Of Protected Material

11 A Receiving Party may use Protected Material that is disclosed or produced by another Party
12 or by a Non-Party in connection with this case only (and no other case) for prosecuting, defending,
13 or attempting to settle this litigation. Protected Material may not be used for any other purposes,
14 including any other litigation, whether on the same issues in this case or others, or for any business
15 or personal purpose. Unless otherwise ordered by the Court or permitted in writing by the
16 Designating Party, a Receiving Party may disclose any information or item designated
17 "CONFIDENTIAL" to:

18 1. The officers, directors, and employees (including House Counsel) of the Receiving
19 Party to whom disclosure is reasonably necessary for this litigation

20 2. Experts of the Receiving Party to whom disclosure is reasonably necessary for this
21 litigation;

22 3. The Court and its personnel;

23 4. Court reporters and their staff, professional jury or trial consultants, and Professional
24 Vendors to whom disclosure is reasonably necessary for this litigation;

25 5. During their depositions or other testimony other oath, witnesses in the Instant
26 Action to whom disclosure is reasonably necessary. Pages of transcribed deposition testimony or
27 exhibits to depositions that reveal Protected Material must be separately bound by the court reporter
28 and may not be disclosed to anyone except as permitted under this Order;

1 6. The author(s) or recipient(s) of a document containing the information or a custodian
2 or other person who otherwise possessed or knew the information;

3 7. Counsel for the parties, including their employees and any other individual or entity
4 performing reasonable and necessary services to counsel in the litigation of the Instant Action.

5 Prior to disclosing any CONFIDENTIAL information to any person listed above (other than
6 counsel, persons employed by counsel, Court Personnel and stenographic reporters, and the parties
7 or their designated representatives), counsel for the Receiving Party shall provide such person with
8 a copy of this Protective Order and obtain from such person a written acknowledgment stating that
9 he or she has read this Protective Order and agrees to be bound by its provisions. (See Exhibit A.)
10 All such acknowledgments shall be retained by Counsel and shall be subject to in camera review by
11 the Court if good cause for review is demonstrated by opposing Counsel.

12 **VII. Filing Of Confidential Material**

13 Without written permission from the Designating Party or a court order secured after
14 appropriate notice to all interested persons, a Party may not file in the public record in the Instant
15 Action any Protected Material, but must instead file the document under seal. comply with LR 10-5

16 **VIII. Unauthorized Disclosure Of Protected Material**

17 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
18 Material to any person or in any circumstance not authorized under this Protective
19 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
20 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
21 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
22 made of all the terms of this Order and (d) provide such person with a copy of this Protective Order
23 and use its best efforts to obtain from such person a written acknowledgment stating that he or she
24 has read this Protective Order and agrees to be bound by its provisions (See Exhibit A). Any
25 unauthorized disclosure of Protected Materials shall be subject to an award of sanctions and/or
26 Order of Contempt subject to the Court's discretion.

27 **IX. Inadvertent Production Of Protected Material**

28 When a Producing Party gives notice to Receiving Parties that certain inadvertently

1 produced material is subject to a claim of privilege or other protection, the obligations of the
2 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
3 is not intended to modify whatever procedure may be established in an e-discovery order that
4 provides for production without prior privilege review.

5 **X. Destruction of Protected Material**

6 Within ***ninety (90) days*** after final termination of this case, each Party shall assemble all Protected
7 Materials and shall, at its option, either: (a) return such Protected Materials to the Producing Party,
8 (b) destroy it, or (c) store or archive copies of Protected Materials in a computer location as needed
9 to comply with law, regulation, accounting, auditing or reinsurance purposes, and/or document
10 retention policies and procedures; provided that any retained Protected Materials shall remain
11 subject to the terms of this Protective Order and Counsel for a Party shall be entitled to retain a copy
12 of all pleadings, motion papers, legal memoranda, correspondence, work product, attorney-client
13 communications that include or are derived from Protected Materials, a filed copy of the Protected
14 Materials created by such Counsel or retained consultants during the course of the litigation, or
15 made part of the record, or which have been filed under seal with the Clerk of the Court, and a copy
16 of all depositions, including exhibits and deposition evaluations containing Protected Materials. If a
17 Party elects to destroy the Protected Materials, a Certificate of Destruction shall be served on all
18 Counsel within ***ninety (90) days*** of final termination of the Instant Action. Unless otherwise
19 indicated, insurer Parties will be assumed to be subject to document retention policies that require
20 them to maintain a copy of all Protected Materials in their claim files, which will also contain a
21 copy of this Protective Order and be subject thereto.

22 **XI. Miscellaneous**

23 A. Right to Further Relief. Nothing in this Order abridges the right of any person to
24 seek its modification by the Court in the future.

25 B. Right to Assert Other Objections. By stipulating to the entry of this Order no Party
26 waives any right it otherwise would have to object to disclosing or producing any information or
27 item on any ground whether or not addressed in this Order. Similarly, no Party waives any right to
28 object on any ground to use in evidence of any matter that it would otherwise possess under

1 applicable law.

2 XII. Modification Or Revocation By Court

3 The Court may modify or revoke this Order on its own motion in the interests of justice or
4 for public policy reasons or, alternatively upon determination following a properly noticed
5 application for relief from any Party.

6 IT SO STIPULATED.

7 Dated: August 20, 2019

8 PAYNE & FEARS

MORALES FIERRO & REEVES

10 By /s/ Sarah Odia
11 Sarah Odia
Payne & Fears
Attorneys for Centex

By /s/ William C. Reeves
William C. Reeves
Morales Fierro & Reeves
Attorneys for Travelers

12 ROPERS MAJESKI

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14 By /s/ Timothy Lepore
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18 KAUFMAN DOLOWICH & VOLUCK
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20 By /s/ Christine Magarian
21 Christine Magarian
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22 Attorneys for Lexington Insurance
Company and New Hampshire
Insurance Company

By /s/ Benjamin Carman
Benjamin Carman
Carman Cooney
Attorneys for Interstate

24 SELMAN BREITMAN

26 By /s/ Todd Haas
27 Todd Haas
Selman Breitman
28 Attorneys for Everest

The Court, having considered the stipulation of the Parties and good cause appearing, orders as follows:

The Stipulated Protective Order is approved and shall be followed in this case.

IT IS SO ORDERED.

Dated: August 22, 2019

Cam Ferenbach
United States Magistrate Judge

Exhibit A

Exhibit A

By signing below, I acknowledge the following:

1. I have been provided a copy of the Protective Order filed in the matter styled *Centex Homes v. St. Paul and Marine Ins. Co.*, United States District Court, District of Nevada Case No.: 17-cv-02407 filed on _____ ("Protective Order").

2. I have read the Protective Order and agree to be bound by its provisions.

IT IS SO AGREED.

Dated:_____

By:_____

Name:_____

Title:_____